

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NATHAN OUELLETTE, JESI AN E.
RODRIGUEZ, GREGG STAPPAS, AND
CB HOME, INC., individually and on
behalf of all those similarly situated,

Plaintiffs,

vs.

CAPITAL ONE FINANCIAL
CORPORATION, CAPITAL ONE, N.A.,
CAPITAL ONE BANK (USA), N.A.,
AMAZON.COM, INC., and AMAZON
WEB SERVICES, INC.,

Defendants.

Case No. 2:19-cv-01203

**STIPULATED MOTION AND ORDER TO
STAY**

STIPULATION

Pursuant to LCR 7(d)(1) and LCR 10(g), the parties hereby request that the Court stay all proceedings and deadlines in this action pending resolution of the motions for transfer and consolidation under 28 U.S.C. § 1407 that are currently pending before the Judicial Panel on Multidistrict Litigation (“JPML”). The JPML will hear oral argument on the Section 1407 motions on September 26, 2019, and Defendants Capital One Financial Corporation, Capital One, N.A., and Capital One Bank (USA), N.A. (collectively, “Capital One”) anticipate an order regarding transfer and consolidation of this case and other related cases to be issued shortly thereafter. All the other parties in this action, including Plaintiffs and Defendants Amazon.com,

1 Inc. and Amazon Web Services, Inc., agree to the requested stay.

2 This case is one of over 45 putative class actions filed in connection with the cyber
3 incident that Capital One announced on July 29, 2019. Plaintiffs filed the Complaint in this case
4 on August 1, 2019; Capital One was served on August 5, 2019; and Capital One's deadline to
5 answer or respond to the Complaint is currently August 26, 2019.

6 On July 31, 2019, plaintiffs in a related case pending in this District, *Fadullon v. Capital*
7 *One Financial Corporation, et al.*, Case No. 2:19-cv-01189 (W.D. Wash., filed July 30, 2019),
8 filed a motion for consolidation and transfer under 28 U.S.C. § 1407 with the JPML in *In re*
9 *Capital One Consumer Data Breach Litigation*, MDL No. 2915 (J.P.M.L. July 31, 2019) ("*In re*
10 *Capital One*"). See *In re Capital One*, Dkt. No. 1. That motion seeks to have related actions
11 arising out of the Capital One cyber incident, including this case, consolidated with the *Fadullon*
12 case and transferred to this District for pretrial proceedings. Subsequently, plaintiffs in other
13 related cases have filed briefs in the *In re Capital One* matter that support transfer and
14 consolidation, but seek other transferee courts, including the Eastern District of Virginia,
15 Alexandria Division (*id.* at Dkt. Nos. 5 and 7) and the District of the District of Columbia (*id.* at
16 Dkt. No. 8). Numerous notices of related actions have also been filed in *In re Capital One*, and
17 additional related cases continue to be filed and are in the process of being noticed to the JPML
18 as potential tag-along actions.

19 Given that over 45 putative class actions have been filed, all related to the same
20 underlying event and asserting the same or substantially similar factual allegations, the JPML is
21 highly likely to grant the motions for transfer and consolidation. If it does, to conserve the
22 parties' resources and promote judicial economy, this case will be consolidated with the other
23 putative class actions for centralized pretrial proceedings in a single transferee court. Under these
24 circumstances, "[c]ourts frequently grant stays pending a decision by the MDL Panel regarding
25 whether to transfer a case." *Good v. Prudential Ins. Co. of Am.*, 5 F.Supp.2d 804, 809 (N.D. Cal.
26 1998); see *Short v. Hyundai Motor Am. Inc.*, No. C19-0318JLR, 2019 WL 3067251 (W.D. Wash.
27 July 12, 2019) (granting stay pending JPML's resolution of Section 1407 motion); *Gonzalez v.*

1 *Merck & Co.*, No. CV-07-3034-LRS, 2007 WL 2220286, at *2 (E.D. Wash. Aug. 2, 2007)
 2 (granting defendant’s motion to stay pending transfer decision and noting that “well settled case
 3 law . . . dictates a stay should be granted to promote judicial economy”); *Rivers v. Walt Disney*
 4 *Co.*, 980 F. Supp. 1358, 1362 (C.D. Cal. 1997) (granting stay pending JPML’s ruling because “a
 5 majority of courts have concluded that it is often appropriate to stay preliminary pretrial
 6 proceedings while a motion to transfer and consolidate is pending with the MDL Panel”);
 7 *Bonefant v. R.J. Reynolds Tobacco Co.*, No. 07-60301-CIV, 2007 WL 2409980, at * 1 (S.D. Fla.
 8 July 31, 2007) (“[I]t is common practice for courts to stay an action pending a transfer decision
 9 by the JPML.”). In fact, Capital One has already successfully moved to stay numerous cases
 10 related to the cyber incident, and to date no court has denied a request to stay a case related case.
 11 *See, e.g., Heath, et al. v. Capital One Financial Corp., et al.*, 3:19-cv-555-JAG, Dkt. No. 14
 12 (E.D. Va. Aug. 16, 2019) (order staying nine related cases pending decision from the JPML);
 13 *Hilker v. Capital One Financial Corp., et al.*, No. 1:19-cv-995-RDA-JFA Dkt. No. 15 (E.D. Va.
 14 Aug. 16, 2019) (order staying related case pending decision from the JPML).

15 Here, too, a short stay of proceedings until the JPML resolves the pending Section 1407
 16 motions will promote judicial economy and sound judicial administration, avoid duplicative
 17 pretrial proceedings and potentially inconsistent pretrial rulings, and prevent prejudice to all
 18 parties.

19 IT IS SO STIPULATED.

20 DATED this 21st day of August, 2019.

21 Respectfully submitted,

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ORDER

IT IS ORDERED.

Dated this 29th day of August, 2019.



Mary Alice Theiler
United States Magistrate Judge